



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 14, 1995

Ms. Cindy L. Becker
Schwartz & Eichelbaum, P.C.
TASA Building
406 East 11th Street
Austin, Texas 78701-2617

OR95-113

Dear Ms. Becker:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27408.

The Huffman Independent School District (the "school district") received a request for "any and all information regarding the proposal, bids, and bidder responses, either written or oral," for a certain civil engineering project proposed by the school district. You claim the requested information is excepted from required public disclosure under section 552.104 of the Government Code.

Section 552.104 excepts "information that, if released, would give advantage to a competitor or bidder." Section 552.104 is designed to protect the interests of the governmental body as in a competitive bidding situation for a contract or benefit. Open Records Decision No. 592 (1991) at 8. It is not designed to protect the interests of private parties submitting information to a governmental body. *Id.* at 8-9. A governmental body must show some actual or specific competitive harm in a particular competitive situation. Open Records Decision No. 541 (1990) at 4. General allegations or remote possibilities that an unknown competitor will gain an unfair advantage are not sufficient to protect information under section 552.104. *Id.* Once the bidding process has ceased and a contract has been awarded, section 552.104 will generally not except information submitted with a bid or the contract itself from disclosure. Open Records Decision No. 514 (1988).

You acknowledge that the records in question are not part of a competitive bidding situation. In fact, under the Professional Services Procurement Act, Gov't Code § 2254.001, the school district is prohibited by law from selecting "a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids." *Id.* § 2254.003. Professional services include professional engineering. *Id.* § 2254.002(2)(A)(vi), (B)(vi). Furthermore, the Professional Services Procurement Act gives very detailed instructions concerning the procedure for procuring architectural or engineering services. *Id.* § 2254.004. The specific procedures indicate that this process does not include bids from a group of architects or engineers, but negotiations with the most highly qualified provider. *Id.* Accordingly, section 552.104 does not apply to the records in question. *See generally* Open Records Decision No. 604 (1992) ("A governmental body may be afforded the right to claim the 'competitive advantage' aspect of [the statutory predecessor to section 552.104] only where competition is authorized by law.").

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LBC/rho

Ref: ID# 27408

Enclosures: Submitted documents

cc: Mr. Paul D. Cook
Investigator
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(w/o enclosures)